

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4 In Re:) Docket No. 3:17-BK-3283 (LTS)
5)
6) PROMESA Title III
7 The Financial Oversight and)
8 Management Board for)
9 Puerto Rico,) (Jointly Administered)
10)
11 *as representative of*)
12)
13 The Commonwealth of)
14 Puerto Rico, *et al.*) May 18, 2022
15)
16 Debtors,)
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19 OMNIBUS HEARING
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21 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
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23 UNITED STATES DISTRICT COURT JUDGE
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25 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN
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27 UNITED STATES DISTRICT COURT JUDGE
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1 APPEARANCES, Continued:

2 Avoidance Actions
3 Trustee:

Mr. John Arrastia, Trustee

4 For Evertec Group
5 and Bristol-Myers
6 Squibb P.R.:

Mr. Nayuan Zouairabani-Trinidad, Esq.

7 For ManpowerGroup:

Mr. Ryan Billings, PHV

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2	WITNESSES:	PAGE
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San Juan, Puerto Rico

May 18, 2022

At or about 9:31 AM

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THE COURT: Good morning. This is Judge Swain speaking.

Ms. Tacoronte, would you please call the case?

COURTROOM DEPUTY: Good morning, Your Honor.

The United States District Court for the District of Puerto Rico is now in session. The Honorable Laura Taylor Swain presiding. Also sitting, Magistrate Judge Judith Dein.

In re: The Financial Oversight and Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, et al., PROMESA, Title III, case no. 17-BK-3283, for Omnibus Hearing.

THE COURT: Again, good morning. Please turn your cameras on for these introductory remarks and instructions, and keep your microphones muted.

Buenos dias, counsel, parties in interest, and members of the public, and press. To ensure the orderly operation of today's virtual hearing, once we turn to our Agenda items, all parties appearing by Zoom must mute their microphones when they're not speaking, and turn off their video cameras if they're not directly involved in the presentation or argument. When you need to speak, turn your

1 camera on and unmute your microphone on the Zoom screen.

2 I remind everyone that consistent with court and
3 judicial conference policies, and the orders that have been
4 issued, no recording or retransmission of the hearing is
5 permitted by anyone, including but not limited to the parties,
6 members of the public, or the press. Violations of this rule
7 may be punished with sanctions.

8 I'll be calling on each speaker during the
9 proceedings. When I do, please turn your camera on, unmute
10 yourself, and identify yourself by name for clarity of the
11 record. After the speakers listed on the Agenda for each of
12 today's matters have spoken, I may permit other parties in
13 interest to address briefly any issues raised during the
14 presentations that require further remarks. If you wish to be
15 heard under these circumstances, please use the "raise hand"
16 feature of Zoom, which can be accessed through the reactions
17 icon in the tool bar at the bottom of the Zoom screen. If
18 anyone has difficulty hearing me or another participant,
19 please use the "raise hand" feature immediately.

20 For those interested, the Agenda, which was filed as
21 docket entry no. 20833 in case no. 17-3283, is available to
22 the public at no cost on Prime Clerk. Although Prime Clerk
23 has now been renamed Kroll Restructuring Administration, the
24 Prime Clerk website addresses and telephone numbers are still
25 operational for this case.

1 I encourage each speaker to keep track of his or her
2 own time, and the Court will also be keeping track of the
3 time. You will hear a beep when your time has expired.

4 If we need to take a break, the telephone listen only
5 participants on the AT&T line are asked to remain on the line
6 during the break, if any. This morning we will proceed until
7 11:50 AM, as necessary, and will resume, if necessary, from
8 1:10 PM to 5:00 PM. All those times are in Atlantic Standard
9 Time. Please turn your cameras off now, and turn the camera
10 back on when we reach your Agenda item, or if I call on you.

11 The first Agenda item is, as usual, Status Reports
12 from the Oversight Board and AAFAF. As requested in the
13 Procedures Order, these reports have been made in writing in
14 advance of this virtual hearing, and are available on the
15 public docket at docket entry nos. 20856 and 20859 in case no.
16 17-3283, respectively. I thank the Oversight Board and AAFAF
17 for the care and detail reflected in their reports, which, as
18 always, cover important matters.

19 First I'll call on the Oversight Board's
20 representative. Would the Oversight Board's representative
21 like to make any additional comments? Then I have one
22 question.

23 Mr. Bienenstock, you are muted.

24 MR. BIENENSTOCK: I'm sorry. Good morning, Your
25 Honor. Martin Bienenstock of Proskauer Rose for the Oversight

1 Board.

2 THE COURT: Good morning.

3 MR. BIENENSTOCK: We don't have additional comments
4 to our Status Report, but of course I want to respond to the
5 Court's questions.

6 THE COURT: Thank you. The one question I have is
7 whether you have an anticipated timetable for commencement of
8 the Public Finance Corporation Title VI proceeding?

9 MR. ROSEN: Your Honor, this is Brian Rosen from
10 Proskauer Rose on behalf of the Oversight Board.

11 We have been working diligently with the AAFAF team,
12 led by O'Melveny, with respect to the PFC Title VI matter. We
13 are hopeful that we can commence a qualifying modification
14 proceeding at around the same time as the Disclosure Statement
15 Hearing for HTA, which would be June 17th.

16 THE COURT: Thank you, Mr. Rosen.

17 MR. ROSEN: Thank you.

18 THE COURT: I have no more questions.

19 MR. BIENENSTOCK: Thank you, Your Honor.

20 THE COURT: So now we'll turn to the AAFAF report.
21 Would the representative for AAFAF like to make any additional
22 comments?

23 MS. VELAZ-RIVERO: Good morning, Your Honor.
24 Carolina Velez-Rivero from Marini Pietrantoni Muniz on behalf
25 of AAFAF. We don't have any additional comments to what we

1 included in the report.

2 THE COURT: Thank you, and good morning. I have no
3 questions for AAFAF at this time.

4 If any of the other counsel who are participating in
5 this videoconference have questions or comments that they wish
6 to make in connection with the status report, please use your
7 "raise hand" function to indicate your request now, and then
8 wait for me to call on you to speak.

9 I don't see any hands raised, so this concludes the
10 status report portion of the Agenda.

11 Does anyone wish to be heard on anything other than
12 the one contested matter, which is the Avoidance Actions
13 Trustee's motion concerning case management procedures? If
14 so, use the "raise hand" feature and I will call on you.

15 I don't see any hands raised for that either. So,
16 counsel who do not wish to be heard in connection with the
17 Avoidance Actions Trustee's motion may excuse themselves
18 before argument on that matter begins. The next scheduled
19 hearing is the June 17th, 2022, Disclosure Statement Hearing
20 in connection with the Proposed Plan of Adjustment for the
21 Puerto Rico Highways and Transportation Authority.

22 I now turn the proceedings over to Judge Dein. Thank
23 you.

24 MAGISTRATE JUDGE DEIN: Thank you.

25 And, again, anyone who's not involved in the

1 Avoidance Action Procedures issues may be excused.

2 So I think the most efficient way to proceed is to
3 hear the arguments, after which I may have some questions both
4 as to the issues raised in the objections and in connection
5 with some concerns of the Court. I'm going to ask everyone to
6 please adhere to your allotted time. We're not going to
7 practice the buzzing today, but there will be a buzz at the
8 end of your time period if you exceed it. Since we are the
9 only ones on the Agenda, though, there is a little bit of
10 flexibility.

11 The plan today is that after today's proceedings, the
12 Court will issue a revised procedures order incorporating the
13 rulings on the objections and addressing the Court's other
14 concerns, which include some more changes and some substantive
15 issues. There will be a limited time period for written
16 comment, and then the final order will issue.

17 Since we only have three people who have noticed that
18 they're going to speak today, you can all remain on -- you can
19 all put your cameras on.

20 Okay. Thank you.

21 All right. Are you ready to start?

22 MR. ARRASTIA: Yes, Judge.

23 MAGISTRATE JUDGE DEIN: Please identify yourself, and
24 I'll hear you.

25 MR. ARRASTIA: Good morning, Judge. John Arrastia of

1 Continental, PLLC, on behalf of the Avoidance Actions Trustee,
2 and I will be brief.

3 In order to establish an orderly framework to resolve
4 more than 50 pending avoidance actions transferred to the
5 Avoidance Actions Trust, the Trustee's proposed set of
6 procedures, of all these defendants, only three timely filed
7 limited objections, and there were also four untimely
8 joinders. I want to address each of those.

9 There is one objection to the length of the requested
10 120-day stay, which the Trustee proposes to use for the
11 purpose of pursuing informal negotiations. The objection
12 points to the procedural history of the cases before the
13 Trustee was appointed on March 15th of this year to argue that
14 this recently appointed Trustee should be limited to a 60-day
15 stay to begin the negotiations for all these avoidance
16 actions.

17 Now, that objection -- objecting party does not
18 indicate why there's any prejudice to the length of the stay
19 sought, but the procedures motion does set forth good cause
20 for such a period. The focus of the remaining objections are
21 directed at the mandatory mediation and the proposal for one
22 motion for summary judgment per party.

23 As to mediation, we believe that that objection
24 misses the mark. During the proposed stay of litigation, the
25 only mediation obligation is that the parties schedule a

1 mediation for some later point in time. That's it. Just to
2 schedule it. That task of scheduling hardly supports the way
3 that it was characterized as, "additional layer of
4 bureaucracy, delay, and cost."

5 Any party wishing to lift the stay at the end of the
6 period, because the informal negotiations weren't successful,
7 can seek to lift the stay. Consequently, the way that the
8 proposed procedures motions are designed is to allow any party
9 to seek to file a dispositive motion and have it heard well
10 before any scheduled mediation.

11 MAGISTRATE JUDGE DEIN: Sorry. So in this stay
12 period, you anticipate only scheduling?

13 MR. ARRASTIA: Yes.

14 MAGISTRATE JUDGE DEIN: But if a party does not want
15 to participate in mediation, how is that handled?

16 MR. ARRASTIA: I think that they need to -- the
17 Procedures Order is a framework. We have a couple individuals
18 that have objected. What we would suggest is let's get to the
19 point that there might actually be a mediation, because before
20 mediation, we would anticipate there might be a motion to
21 dismiss, there's going to be informal resolution. Let's keep
22 the framework in place. If someone has a legitimate basis not
23 to participate in mediation, well, then they can raise that
24 issue.

25 And what we built into it, which is similar to this

1 Court's orders, is you have to have a meet and confer. Let's
2 talk about it. But I think that it's important for the more
3 than 50 cases to have a framework. And courts have uniformly
4 found, even if a mediation doesn't result in a settlement,
5 it's still beneficial, and we've taken effort to assemble a
6 panel that we think would be very helpful, including retired
7 Judge Cyganowski. And these are the individuals that we
8 believe can add a lot of value.

9 But right now we're objecting to a procedure that we
10 anticipate will happen well down the road, after there have
11 been opportunities. Mediation, we're not asking for an early
12 mediation, before everything else could be exhausted. We
13 anticipate that this will be later in the process if the
14 parties so choose, if that's the way that it wants to be
15 scheduled, but --

16 MAGISTRATE JUDGE DEIN: You have an outside date for
17 the mediations?

18 MR. ARRASTIA: No, we do not. We do not. Again,
19 this is a framework, and we want the Court obviously to weigh
20 in, because this is something that's going to implicate
21 judicial labor as well. If people -- if more than the couple
22 of objections out of the more than 50, if that somehow --

23 (Sound played.)

24 MR. ARRASTIA: -- everybody doesn't want to
25 participate --

1 MAGISTRATE JUDGE DEIN: You can finish up. You're
2 muted.

3 I'm afraid he got muted.

4 MR. ARRASTIA: I apologize. As to the summary
5 judgment, the argument relies on a set of hypothetical facts,
6 and it concedes as much. It says it may be that the claims
7 were not pursued, it may be that the claims were dismissed,
8 there might be additional issues, but assuming, again, that
9 the case is not resolved before summary judgment, no one has
10 identified any issues that can't be addressed in one 35-page
11 motion for summary judgment.

12 On the other hand, multiple motions for summary
13 judgment don't just mean work for the parties. It means more
14 labor by the Court without an articulated specific benefit.
15 Basically, as with any framework set forth by any procedures
16 motion, any party can seek -- for good cause, can seek a
17 deviation and modification from the Court. There's no
18 prejudice to any party if the objections are overruled,
19 because there's nothing in the order, the proposed order that
20 precludes a party from seeking to modify the mediation or the
21 summary judgment procedures based on a set of actual existing
22 facts that demonstrate good cause.

23 We just believe that it's premature right now,
24 because this is a framework.

25 MAGISTRATE JUDGE DEIN: Just one other question, and

1 then I'll hear from the others and you can come back.

2 MR. ARRASTIA: Thank you.

3 MAGISTRATE JUDGE DEIN: Do you anticipate, during
4 that stay period, that parties could lift -- could move to
5 lift the stay or to be exempt from the mediation?

6 MR. ARRASTIA: What we -- the way that we had
7 structured it is that, at the end of the stay period, it
8 would -- then the parties could then move to lift the stay.
9 This is what we anticipate. You have more than 50 actions, so
10 some people will be negotiating, some people might not want to
11 continue the informal negotiations, but there's 50 something
12 avoidance actions. There's one Avoidance Actions Trustee. If
13 we move to not have a -- let's call it a period for
14 negotiation, and he is involved in active litigation in some
15 cases, it's going to detract from the ability to negotiate
16 with the other parties.

17 This is just not a two-party race. This is -- so
18 we're very sensitive, and we've tried to build into the
19 procedures orders an opportunity to give everyone an
20 opportunity to negotiate, to participate in scheduling, how
21 they want to handle the case, but give each side enough time
22 to respond.

23 MAGISTRATE JUDGE DEIN: Okay. Thank you.

24 MR. ARRASTIA: Thank you, Judge.

25 MR. ZOUAIRABANI-TRINIDAD: Good morning, Your Honor.

1 Can you hear me?

2 MAGISTRATE JUDGE DEIN: Yes, I can.

3 MR. ZOUAIRABANI-TRINIDAD: Okay. Good morning.

4 Attorney Nayuan Zouairabani of McConnell Valdes, LLC,
5 representing Evertec Group and Bristol-Myers Squibb.

6 Your Honor, as a housekeeping matter, the objectors
7 conferred before the hearing, and the issue on the appropriate
8 length of a proposed stay period will be submitted in the
9 pleadings filed by International Surveillance Services
10 Corporation, and will not be argued today.

11 Now, Your Honor, while the Trust talks about the fact
12 that they're recently appointed, I think that some context as
13 to these cases and their history is very important to
14 understand the objections.

15 The first thing is the objectors are not here because
16 they want to. They're here against their will, because of the
17 complaints filed in April and May of 2019. These cases have
18 been pending for three years, and have transpired in a manner
19 that's been most favorable to plaintiffs, even though they
20 have the burden to prevail in these actions.

21 During the last three years, many of the objectors
22 have been involved in informal discussions with former
23 plaintiffs, submitted swaths and swaths of documentation and
24 information to help consensually resolve these cases. In
25 short, plaintiffs have had almost exclusive control in the

1 handling of these cases, while defendants, the most vulnerable
2 parties here, have had minimum say, if any.

3 The Trust continues unfortunately with this trend,
4 and this dynamic, by seeking the imposition of the procedures
5 with the detriment of the objectors, especially the issues
6 that have been highlighted. As discussed in Evertec's brief,
7 mandatory mediation, as opposed to a voluntary mediation
8 framework, should not be forced here because, A, it will be
9 burdensome on defendants who will have to share the cost of a
10 private mediator. B, and the fact that -- to one of the
11 points of Mr. Arrastia, it may not even be necessary. The
12 Trust will have the benefit of the stay period, plus the
13 information delivered by defendants these last three years to
14 resolve these cases. And, C, the cases will be delayed even
15 further until mediation concludes, whenever that may be.
16 Currently, the framework is too open-ended.

17 In their reply, the Trust cites the First Circuit
18 decision of *In re Atlantic Pipe Corp.*, 304 F.3d 135, to
19 support their request for a blanket mandatory mediation in
20 these cases, but *Atlantic Pipe* actually supports Evertec's
21 argument that mandatory mediation cannot be imposed wholesale
22 without a deep dive of the particularities of each case.

23 In *Atlantic Pipe*, the First Circuit analyzed factors
24 such as the complexity of the case, the parties involved, and
25 the procedural state of the litigation to assess whether

1 mandatory mediation was appropriate.

2 (Sound played.)

3 MR. ZOUAIRABANI-TRINIDAD: The Omnibus Motion does
4 not take any of these factors into account which need to be
5 assessed on a case-by-case basis. Mandatory mediation cannot
6 be imposed without this analysis.

7 Lastly, *Atlantic Pipe* held that a mandatory mediation
8 order that does not set reasonable limits on the duration of
9 the mediation and the mediators' fees is doomed to fail,
10 because the order must be crafted in a manner that preserves
11 procedural fairness and shields objecting parties from undo
12 burdens. The proposed framework does not contain any of these
13 safeguards, unfortunately, and this reason is sufficient to
14 deny the procedures under the *Atlantic Pipe* standard.

15 Your Honor, the problem currently with the framework
16 is that it's an automatic opt-in for everyone involved,
17 regardless of the case, the stage, or the status. If it had
18 been structured as a voluntary opt-in, without having to jump
19 through hoops to do an opt-out, perhaps we would be looking at
20 a different story, and even then --

21 MAGISTRATE JUDGE DEIN: Excuse me. Though I'm not
22 sure they're jumping through hoops, I think having 50 parties
23 file something is more of a burden on the Court than the few
24 people that want to opt out on it. So I'm not quite getting
25 the same balance of burden as you are expressing. I agree

1 that there ought to be an opt-out.

2 MR. ZOUAIRABANI-TRINIDAD: Correct. And the issue
3 right now is right now there are current parties who have
4 problems with the automatic opt-in. We know that for a fact.
5 And the fact that those parties would be required under the
6 current procedures, as proposed, to have to come to the Court
7 and seek an opt-out, have to explain on a case-by-case basis
8 why, as opposed to the Trustee having to explain why they
9 should stay, it's burdensome definitely on the parties.

10 I understand the Court's concerns, but the framework
11 currently has deficiencies that need to be addressed, and not
12 the least of it is that there's no limitation on the cost, on
13 the cap -- on how much the mediation might cost, and this is
14 an issue that was flagged in *Atlantic Pipe*. And also the
15 limitation, which the Trustee just mentioned that they -- the
16 current procedure does not establish how long it's going to
17 be.

18 MAGISTRATE JUDGE DEIN: Okay.

19 MR. ZOUAIRABANI-TRINIDAD: And with that, Your Honor,
20 I'll yield whatever remaining time I have to my colleagues,
21 unless the Court has other questions.

22 MAGISTRATE JUDGE DEIN: I think you're out of time.

23 MR. ZOUAIRABANI-TRINIDAD: Okay. Thank you, Your
24 Honor.

25 MAGISTRATE JUDGE DEIN: But that was very generous.

1 MR. BILLINGS: Good morning, Your Honor. Ryan
2 Billings from Kohner, Mann & Kailis for Manpower.

3 MAGISTRATE JUDGE DEIN: Go ahead.

4 MR. BILLINGS: And we objected on a very limited
5 issue of the requirement of an omnibus summary judgment
6 motion. And I have very, very short comments. I'm going to
7 speak generally and then specifically about our case.

8 So Federal Rule of Civil Procedure 56 and Bankruptcy
9 Rule of Procedure 7056 adopted a framework for summary
10 judgment motions. It's been tried and tested in thousands of
11 courts, in millions of cases over eight decades. It is
12 efficient and fair to the parties. And one of the reasons for
13 that we listed in our brief includes that allowing partial
14 summary judgment motions can streamline the action, narrow the
15 issues, facilitate settlement, reduce the scope at trial, and
16 ultimately reduce the cost on parties and litigants.

17 To my mind, since we already have this framework, the
18 question is whether the Trustee has established good reason
19 for departing from it, and I don't think they have. Let me
20 talk specifically about the Manpower case. We have been
21 trying for two and a half years. We've been engaged in
22 serious and furious settlement negotiations with the former
23 powers that be. Unfortunately, they're gone, and we're going
24 to now negotiate with new parties. Those negotiations
25 revealed that there are about five or six issues that were

1 really contested by the parties, and we think we can handicap
2 most of them, but there may be that one issue. There's only
3 really one issue that the parties disagree so much they can't
4 settle the case, and we think it would be efficient to allow
5 us to move just on that issue, so we can get guidance from the
6 Court to resolve that logjam and hopefully resolve the matter
7 outside of court, burdening no one.

8 We have no intention of filing multiple 35-page
9 motions. We just want the flexibility to present limited
10 issues to the Court if that is the issue which is holding up
11 resolution of the matter. And I agree with the Trustee to
12 some extent that we can't project everything that's going to
13 happen. The *Manpower* case involves over a thousand payments
14 over four years and 48 million dollars in dispute.

15 We, as Mr. Zouairabani explained, have provided a lot
16 of information to the debtor, and have not gotten anything
17 back yet, so we don't know what we don't know. But for that
18 reason, I don't think that there's a good cause for departing
19 from the framework that is set up by the rules and that have
20 proven to be fair to both sides.

21 MAGISTRATE JUDGE DEIN: Thank you.

22 All right. The Trustee, do you have responses? And
23 then I have some comments for everybody.

24 MR. ARRASTIA: Your Honor, the entire idea of the
25 mediation -- frankly, I don't want to be in a week-long

1 mediation with 50 parties. That's not the intention. One of
2 the reasons that we baked in meet and confer is so that we can
3 discuss things as the issues actually arise, and we can say,
4 does this make sense, does this not make sense, because, if
5 someone files a motion for a simple reason, and it makes
6 sense, they're conferring with us. Are we going to -- I hope
7 we're not going to object to something that's reasonable and
8 makes sense and is in everyone's best interest, but that being
9 said, the mediation's designed -- that's a few thousand
10 dollars at most, as opposed to discovery costs, expert fees,
11 professional fees, and other expenses. That's what's going to
12 drive up the cost of the case. Hardly, in my experience, has
13 mediation been the expensive part of the case. It's been
14 everything else that mediation is designed to avoid.

15 And with respect to summary judgment, I respect the
16 comments --

17 (Sound played.)

18 MR. ARRASTIA: -- that were made by opposing counsel.
19 That's something that, if it arises, we should discuss, and if
20 we disagree on that limited instance, the Court can decide.

21 Thank you, Your Honor.

22 MAGISTRATE JUDGE DEIN: So this is where I am, and
23 then I have a few questions, but, first of all, let me just
24 deal with the timeliness of the joinders, because that was one
25 of the issues. I do find that the joinders were timely under

1 the 16th Amended Case Management Procedures Act, which --
2 procedures, not act, procedures, which allowed for the
3 joinders to objections to be due eight calendar days before
4 the applicable hearing date. So I think everything's timely.

5 The 120-day stay does make sense, but I think ISSC
6 (International Surveillance Services Corporation) has been
7 pushing the issue for a long time, and is the only party that
8 objected to the length of that stay. So the Order will
9 provide that there will be a 120-day stay, except that ISSC
10 may, after 60 days, file a motion to lift the stay.
11 Otherwise, the motions to lift stay will be no sooner than 120
12 days.

13 And I'm assuming you mean from the date the Order
14 enters?

15 MR. ARRASTIA: Yes, Your Honor.

16 MAGISTRATE JUDGE DEIN: Okay. And I do -- the stay
17 will remain in effect until lifted, which means that any party
18 can move to lift the stay at the conclusion of the appropriate
19 stay period.

20 I think somebody had suggested an automatic lifting
21 of the stay. It's procedurally too complicated for us to have
22 cases that are just floating and we don't have a schedule for.
23 So the stays will remain in effect until they're lifted.

24 The Procedures Order will provide and require the
25 Trustee to file a report at the conclusion of the 120-day

1 period as to all -- the status of all proceedings, and every
2 30 days thereafter. And the mediations, at least the initial
3 meetings, need to be scheduled within 60 days of the
4 expiration of the 120-day period. When --

5 MR. ARRASTIA: Quick clarification?

6 MAGISTRATE JUDGE DEIN: Go ahead.

7 MR. ARRASTIA: The initial meetings, do you mean
8 mediations, scheduling --

9 MAGISTRATE JUDGE DEIN: A schedule -- you have to
10 have set a schedule, and the goal should be, if at all
11 possible, for the initial session to take place within an
12 additional 60 days, but the Court will entertain an extension
13 of that if necessary. But we need to get -- I am assuming
14 that some of these matters will go forward during the 120-day
15 period in some form, and that you will at least be able to
16 schedule initial meetings. Okay?

17 MR. ARRASTIA: Thank you, Your Honor.

18 MAGISTRATE JUDGE DEIN: With respect to the
19 objections to the mandatory mediation, I'm trying to balance
20 the need for all the parties to know what they're doing and
21 the Court's ability to actually focus on specific cases. I
22 think under *Atlantic Pipe Corp.*, the Court does have the
23 jurisdiction, in this broad number of cases, to issue an order
24 requiring mandatory mediation and mandatory cost splitting,
25 provided there's an out. All right?

1 And so the Order will provide that any party may move
2 for an exemption, either as to the cost or as to the mandatory
3 mediation, but that way the Court will actually have the
4 specifics of each case that it's an issue in fully briefed. I
5 don't think it's going to be the burden that counsel's afraid
6 of. I think having 50 parties file motions on whether or not
7 they want mediation is too burdensome, so the Order will be
8 the presumption is mediation, the presumption is cost
9 splitting, but any party may move for an exemption from those.

10 As to the limit to the summary judgment, I agree that
11 it's going to be case by case, so the Order will provide,
12 again, that it's a presumption of one motion, but the parties
13 may seek to modify that in this specific case. So does
14 anybody have any major problems with any of that?

15 MR. ARRASTIA: No, Your Honor.

16 MR. ZOUAIRABANI-TRINIDAD: If I may, Attorney Nayuan
17 Zouairabani on behalf of Evertec.

18 Your Honor, we have a concern. I understand the
19 Court's logic with regards to the opting out. The concern
20 that we have is still the framework. We could -- if I
21 understood the Court correctly, a party could move for either
22 an exemption of the mandatory mediation, on splitting of the
23 cost. There's still a remaining issue as to how long will the
24 mediation take and setting some sort of limitation there. So
25 I don't know if that's something that could be addressed as

1 part of the Order that may be entered, but that is still a
2 concern that I believe is still out there.

3 MAGISTRATE JUDGE DEIN: Okay. So the Order will
4 provide that the mediation needs to be scheduled at least
5 within 60 days after the expiration of the 120-day period
6 unless you agree otherwise. All right. So you have at least
7 the start. How long a mediation is going to take, I've been
8 doing it for 21 years, I have no idea how long mediation
9 takes. We have good days and bad days.

10 MR. ZOUAIRABANI-TRINIDAD: I understand.

11 MAGISTRATE JUDGE DEIN: But that is something that is
12 part of the conversation, right? So the parameters of the
13 mediation, picking the mediator, the cost I think can be
14 affected by who you pick and the like. Those are subjects of
15 conversation. And if you can't reach agreement on it, either
16 the Court will order something, or you won't go to mediation
17 and we'll go down the litigation path. Okay.

18 MR. ZOUAIRABANI-TRINIDAD: Oh, Your Honor, I
19 understand --

20 MR. ARRASTIA: Your Honor, I --

21 MR. ZOUAIRABANI-TRINIDAD: I'm sorry. Go ahead,
22 Counsel.

23 MR. ARRASTIA: I was going to say, Your Honor, if you
24 like, I can share with you a couple of thoughts that we are
25 contemplating that might address some of these concerns. One

1 are mediations -- mediators that we are hoping to get will be
2 some on island, retired Judge Cyganowski, who has a higher
3 fee, and folks in the middle.

4 So we want to provide -- we're sensitive to the cost,
5 so we want to provide people that are vetted, that are
6 interested, that we think are -- provide different economic
7 options. We anticipate that a mediation -- we wouldn't want
8 to schedule it for more than a day, unless the parties agree,
9 because they think they're moving forward. That's the thought
10 process. We want to have an opportunity. We don't want to
11 create a burden, and we don't want to foist an unnecessary
12 expense, because, don't forget, the Trustee has one half of
13 that expense.

14 So I just wanted to share that, to the extent that's
15 helpful to the Court.

16 MAGISTRATE JUDGE DEIN: Thank you.

17 And the Order, as modified, will provide that you
18 need to confirm that the mediators are -- once one's selected,
19 that they're available, and qualified, and that there's no
20 conflict. So that will be an amendment you'll see in the
21 Procedures Order. All right.

22 MR. ZOUAIRABANI-TRINIDAD: Your Honor, I had one
23 observation to what Mr. Arrastia just indicated. In terms of
24 the schedule, because I believe that it's going to be
25 scheduled within 60 days, will that proposed schedule be filed

1 with the Court? I don't know if it's possible that within
2 maybe 60 days, after 120 days, do we file with the Court --

3 MAGISTRATE JUDGE DEIN: That's -- I'm sorry --

4 MR. ZOUAIRABANI-TRINIDAD: Uh-huh.

5 MAGISTRATE JUDGE DEIN: -- but as I've said, the
6 Trustee needs to file a status report on all cases at the
7 120-day mark, and every 30 days thereafter.

8 MR. ZOUAIRABANI-TRINIDAD: Okay.

9 MAGISTRATE JUDGE DEIN: So the Court will now -- and,
10 I mean, it sounds like you have a plan that's in your mind on
11 the way that Evertec's claims should be handled. Then you
12 need to talk to the Trustee, and get that scheduled sooner
13 rather than later if that's what you want. My guess is some
14 of the parties will want it later rather than sooner, so there
15 may be ample room for that as well.

16 All right. So we've addressed my list of revisions.
17 The notice of settlement, as proposed, has no identifying
18 information, and I think any notice has to include the
19 adversary case number and identify the settling party, and it
20 needs an objection period in it, because parties can't object
21 to something they don't know what it is.

22 Structurally, in the Procedures Order, if the case is
23 going to go to trial, at that point there will be the option
24 to consent to a magistrate judge or not, but that procedure
25 needs to be reflected in the Procedures Order. Obviously,

1 under the Rules, only if both parties consent will a matter go
2 to a magistrate judge, but we'll put in that time where
3 everybody will have the option to make that decision. And I
4 think, given the wide range of topics that are raised by these
5 avoidance actions, it really is too early to set all of the
6 trial rules. So the Order will sort of knock all that out,
7 and just provide that if you get to -- if you get to
8 litigation, there'll be a conference with the Court, and a
9 pretrial schedule will be set at that point. Okay?

10 MR. ARRASTIA: Thank you. Thank you, Your Honor.
11 Thank you for your time and attention.

12 MAGISTRATE JUDGE DEIN: So what's going to happen is
13 we'll send out a proposed order in the next day or so. You'll
14 have a very limited timeframe to respond if you have any
15 objections, and then a final order will be issued. Okay?

16 MR. ARRASTIA: Thank you, Your Honor.

17 MAGISTRATE JUDGE DEIN: All right.

18 MR. BILLINGS: Thank you, Your Honor.

19 MR. ZOUAIRABANI-TRINIDAD: Thank you, Your Honor.

20 MAGISTRATE JUDGE DEIN: Is there any other matter
21 from anybody who's still here?

22 MR. ARRASTIA: No, Your Honor.

23 MAGISTRATE JUDGE DEIN: Okay. So I'm going to
24 conclude this Omnibus Hearing. As Judge Swain has indicated,
25 the next scheduled hearing is the June 17th, 2022, Disclosure

1 Statement Hearing in connection with the proposed Plan of
2 Adjustment for the Puerto Rico Highways and Transportation
3 Authority. As with today's hearing, that hearing will occur
4 over a combination of Zoom and listen-only telephone line.

5 And I do want to join with Judge Swain in thanking
6 the court staff in Puerto Rico, Boston, and New York for their
7 work in preparing and for conducting today's hearing, and
8 their amazing and continuous support of the administration of
9 these very complex cases, only what can, I think, kindly be
10 described as challenging circumstances.

11 So I wish everyone good health. Stay out of trouble.
12 And court is adjourned. Thank you.

13 MR. ARRASTIA: Thank you, Your Honor.

14 MR. ZOUAIRABANI-TRINIDAD: Thank you, Your Honor.

15 (At 10:09 AM, proceedings concluded.)

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1 U.S. DISTRICT COURT)

2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 30 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 May 18, 2022.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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